

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA (RICHMOND)

In Re:) Case No. 08-35653-KRH
CIRCUIT CITY STORES, INC., et) Richmond, Virginia
al.,)
Debtors.) December 12, 2019
) 9:34 a.m.
-----)

TRANSCRIPT OF HEARING ON
MOTION FOR CONTEMPT FILED BY CIRCUIT CITY STORES, INC.
LIQUIDATING TRUST

MOTION TO EXPEDITE HEARING FILED BY CIRCUIT CITY STORES, INC.
LIQUIDATING TRUST) FILED BY LYNN L. TAVENNER OF TAVENNER &
BERAN, PLC ON BEHALF OF CIRCUIT CITY STORES, INC. LIQUIDATING
TRUST.

BEFORE THE HONORABLE KEVIN R. HUENNEKENS
UNITED STATES BANKRUPTCY JUDGE

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APPEARANCES:

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PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING.

TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE.

1 THE CLERK: All rise. The United States Bankruptcy
2 Court for the Eastern District of Virginia is now in session,
3 the Honorable Kevin R. Huennekens presiding. Please be seated
4 and come to order.

5 THE COURT OFFICER: Circuit City Stores, motion for
6 contempt and motion to expedite hearing.

7 MS. TAVENNER: Good afternoon, Your -- good morning,
8 Your Honor. It feels like afternoon already. I apologize.

9 THE COURT: Time flies, huh?

10 MS. TAVENNER: It certainly does.

11 THE COURT: Okay.

12 MS. TAVENNER: For the record, Lynn Tavenner of the
13 law firm of Tavenner & Beran. Together with me today is my law
14 partner, Paula Beran, at counsel table, as well as Katie
15 Bradshaw, who you've seen many times. Also in the courtroom is
16 Mr. Jeff McDonald as well as Mr. -- both of whom are employees
17 of the trust, as you know -- as well as Mr. Vern Inge who has
18 been retained to serve as personal counsel for the two of them
19 if needed.

20 THE COURT: All right. Thank you.

21 MR. INGE: Good morning, Your Honor.

22 MS. TAVENNER: And Your Honor, we thank you very much
23 for giving us time this morning to appear before you. As
24 outlined in our motion, time is of the essence because a
25 subpoena was issued and attempted to be served for a deposition

1 on barely six days' notice, and it's supposed to occur this
2 coming Monday.

3 So while you know, Your Honor, that we do want to note
4 for the record that we don't take lightly filing pleadings
5 asking for sanctions against fellow lawyers and their firms.
6 In fact, we've even used the Batzli firm as a referral source,
7 and one of the Tavenner & Beran members has even personally
8 utilized the firm in connection with personal services.

9 So we didn't file this lightly. We tried to -- we had
10 wanted to do anything possible but be before you this morning.
11 We understand that Mr. Fose and his team are not happy with the
12 quick hearing on the motion. You know, they complain about
13 what we have done in little than twenty-six hours when they've
14 had over fifteen months, Your Honor, to take appropriate action
15 in this Court, and they didn't do it.

16 Actually, Your Honor, when you look at everything that
17 the trust was able to do to get to this point, since the
18 subpoena was served or provided to Ms. Bradshaw about one
19 o'clock on Tuesday, it's quite remarkable that we were able to
20 get to the motion on file as quickly as we did.

21 When the subpoena was served on Tuesday afternoon,
22 both members of Tavenner & Beran were actually at Varina High
23 School with several other members of our bar, speaking to
24 multiple classes on financial literacy. But in between
25 presentations we were able to speak by cell phone to Ms.

1 Bradshaw, reviewed the subpoena. We spoke with her again on
2 the way back from Varina, in the afternoon.

3 Upon return to our offices late in the day, we spent
4 time learning about the topics that had occurred in Mr.
5 McDonald's deposition that we had not been completely familiar
6 with and discovered the expanses of nature of the questioning
7 with regard to that deposition that had previously occurred.
8 We then also had discussions with the trustee, who as Your
9 Honor knows, is on the west coast.

10 After determining a game plan with our client, we then
11 began making calls to see if we could locate individual counsel
12 for Ms. Bradshaw and Mr. McDonald, provided conflict
13 information; we had additional conversations with both of them
14 into the late evening.

15 Yesterday morning we began drafting the motion. We
16 immediately reached out to the Court to ascertain an available
17 hearing date that could occur in advance of the time of the
18 scheduled deposition. We received this morning as the
19 available time. So upon securing the same, we coordinated and
20 discussed with personal counsel who cleared conflicts about the
21 various issues in play. We had --

22 THE COURT: I only had one hour between today and
23 Monday.

24 MS. TAVENNER: We appreciate that, Your Honor. We are
25 just trying to explain that, to the extent that others have

1 issues with the time frame, we wanted to advise Your Honor that
2 we worked very hard to get it before you as quickly as we
3 could, given your court scheduling.

4 So we appreciate you allowing us to get before you.
5 We didn't have much time ourselves, even though they've had
6 over fifteen months to come before Your Honor and address
7 things with you because -- or even notify the trust and its
8 counsel as to what they were doing.

9 Instead, it appears that Mr. Fose and his team have
10 chosen to pretend that they were just taking a deposition of
11 trust staff on an individual basis only, even though they knew
12 full well that the information that they were seeking of Ms.
13 Bradshaw is information specifically pertaining to trust
14 matters.

15 This is indeed astonishing, given the prior history
16 with respect to this matter. And this is why we needed to file
17 the motion, to get before you today to protect the integrity of
18 this Court, its jurisdiction, and to seek enforcement of your
19 confirmation order and protection from the foreign subpoenas
20 that were issued which, we believe, under false pretenses, Your
21 Honor.

22 And while we're here on an expedited motion, the
23 underlying facts and issues are not new at all. But even
24 though the subpoenas at issue purport to be of Bradshaw and
25 McDonald individually, it's undisputed at this point that the

1 testimony sought in the upcoming deposition of Ms. Bradshaw and
2 the trial testimony specifically regards information pertaining
3 to the operations of the trust.

4 It's also undisputed, Your Honor, that Mr. Fose and
5 his team were put on notice of the jurisdiction of this Court
6 in September of 2018. It's undisputed, Your Honor, that Mr.
7 Fose and his team were again put on notice of the jurisdiction
8 of this Court in March of 2019.

9 Now some fifteen months later, Your Honor, they
10 continue to ignore the jurisdiction of this Court and attempt
11 to do an end run around the same by first noticing up a
12 deposition of Mr. McDonald, in his personal capacity,
13 continuing to conduct that deposition in the same proceeding,
14 in clear violation of this Court's confirmation order, and
15 making inquiry regarding trust matters while they were on
16 notice that that was improper.

17 Such questioning on trust matters is undisputed, but
18 Mr. Fose and his team didn't stop there. After they had done
19 that, undaunted, they did then notice up the deposition of Ms.
20 Bradshaw, notice of trial subpoenas for Ms. Bradshaw and Mr.
21 McDonald. The deposition is to take place on Monday, Your
22 Honor.

23 And while the trust initially feared that Mr. Fose and
24 his team might once again attempt to delve into trust
25 inquiries, it's now undisputed that such inquiry is indeed the

1 focus of that deposition.

2 Mr. Ewing has plainly admitted the same. That is his
3 purpose, Your Honor. Such inquiry must fail, for multiple
4 reasons, at this point, as being in violation of your
5 confirmation order and the trust agreement. And attempts to
6 blatantly disregard this Court's jurisdiction without first
7 coming in here and seeking relief from the same, after being on
8 notice for more than fifteen months, must be sanctioned, Your
9 Honor.

10 We seek sanctions today against Mr. Fose; against Ms.
11 Barton, the counsel that issued the original subpoena -- first
12 two subpoenas; Mr. Ewing, who's now issuing subpoenas; and his
13 law firm, for such action, and ask for fees incurred to address
14 each and every one of those infractions, going back to the
15 first subpoena issued in September of 2018.

16 We've tried to be consensual, we tried to provide
17 information, and it didn't work, Your Honor. So unfortunately,
18 we are where we are today. We're prepared to present testimony
19 in support of our motion for contempt.

20 THE COURT: All right. Thank you.

21 MR. EWING: Good morning, Your Honor.

22 THE COURT: Good morning.

23 MR. EWING: Mike Ewing. I represent David Fose in a
24 divorce case that's pending in Hanover County. I'm not a
25 bankruptcy attorney, I don't appear before this Court. I

1 received these motions last night after 5 o'clock. Counsel has
2 stated that they did everything they could to work this out.
3 They didn't do the most basic thing, and that was simply pick
4 up the phone and call me. And I would have done whatever
5 necessary to try to work this out.

6 Obviously I read the motions last night, I was
7 concerned, and maybe I had issued a subpoena wrong. I don't
8 know. I don't know. But I immediately contacted counsel by
9 email and agreed that I would take -- or continue the
10 deposition for Monday until, one, I could consult with a
11 bankruptcy attorney, and two, try to work with counsel to try
12 to obtain the information that I needed. We did have
13 communication with counsel last night, but we didn't work out
14 anything that would allow us to not appear today.

15 I have subpoenaed a witness to trial. There is a
16 deposition on Monday. There is a trial on January the 2nd.
17 Ms. Fose -- Mrs. Fose, who is the former employee of the trust,
18 her attorney has also subpoenaed trust employees for the trial
19 on January the 2nd.

20 The issue in this case is very limited. Ms. Fose
21 signed a one-year contract with the trust. Six months of that
22 contract was during the marriage; six months was after the
23 parties separated. She was supposed to receive two bonuses,
24 one at the six-month date, one at the twelve-month date.

25 Those bonuses total about 375,000 dollars, a

1 significant issue in the divorce case. Those bonuses that have
2 been paid, they're paid on the dates that they were due. But
3 what happened was an addendum was executed before the parties
4 separated, and that addendum changed the bonus terms. It
5 didn't change the amount of the bonus, it didn't change the due
6 dates; it changed the wording about when that bonus would be
7 earned.

8 Obviously they tried to change it so that it was
9 earned in the last six months of the agreement, not the first
10 six months. That would make the bonus separate property
11 instead of marital property. That's what this is about. It's
12 my understanding that no other employees of the trust signed an
13 addendum like that, just the employee that just happened to be
14 going through a divorce at that time.

15 My questions are very simple and would probably take
16 fifteen minutes of testimony: why was the addendum signed, and
17 did the wife ask for that addendum. I mean, that's the
18 questions that I need answered.

19 What I'm asking the Court to do today is maybe
20 continue this matter even until next week. And If it has to go
21 later, then it does, then I'll just have to continue the
22 divorce case in Hanover to a later date. I need this
23 information. It's a critical issue. If I have not jumped
24 through all of the hoops that are necessary, I apologize, and I
25 will do that. And I will do what is necessary to obtain this

1 information.

2 Again, I have not had an opportunity to prepare for
3 this motion today. I didn't receive it until last night. I
4 have not had the opportunity to talk to bankruptcy counsel.

5 THE COURT: All right. Thank you.

6 MS. BERAN: Your Honor, for the reasons articulate --
7 I apologize, Your Honor. For the record, Paula Beran of the
8 law firm of Tavenner & Beran.

9 For the reasons articulated by Ms. Tavenner, we
10 believe we've done everything we possibly could to try and work
11 it out today. I mean, I think it's undisputed that we
12 previously provided to Mr. Fose's counsel and his entire team a
13 copy of Your Honor's opinion in Toshiba fifteen months ago. We
14 again provided a copy of Your Honor's opinion in the Circuit
15 City/Toshiba matter back in March of 2019. In each instance,
16 it was in response to a subpoena.

17 In connection with that, Your Honor, notwithstanding
18 that we informed them that their subpoenas were null and void,
19 because they did not first receive leave of this Court, we
20 nonetheless, knowing that Your Honor would want us to work it
21 out, we tried to find a solution and ultimately actually
22 provided the documents that they requested.

23 And these documents that Mr. Ewing is referencing,
24 it's undisputed, they have had these documents for fifteen
25 months, Your Honor. The evidence will establish that.

1 So we respectfully request that we go forward today.
2 We are prepared to put on evidence to demonstrate that all of
3 these facts are undisputed and that, notwithstanding knowing
4 about Your Honor's jurisdiction for over fifteen months,
5 actually receiving a copy of Your Honor's opinion in the
6 Circuit City/Toshiba matter twice, fifteen months ago, and then
7 again in March of 2019, they have had blatant disregard for the
8 jurisdiction of this Court and have marched forward, and
9 they're the one that have put this in an emergency situation.

10 They noticed this up on less than six days' notice.
11 They served Ms. Bradshaw and Mr. McDonald Tuesday afternoon,
12 and unfortunately, Your Honor, by continuing it sometime next
13 week, there's not availability, from Tavenner & Beran's
14 perspective, to come back in before this Court and/or in
15 connection with Your Honor's availability. And so we need to
16 have this matter resolved.

17 We did try to. I can provide to Your Honor a slew of
18 emails between myself and Mr. Ewing to try and work it out
19 under the time constraints that Tavenner & Beran was under,
20 this Court's availability, and the scheduled trial on January
21 2nd, and we were unable to. We respectfully request, based on
22 the same, that we go forward. And I am prepared today to put
23 on evidence to demonstrate the undisputed facts.

24 THE COURT: Well, I have not looked at my schedule for
25 next week. I do know that with the holidays coming things are

1 pretty slammed right now with the Court because everybody wants
2 to get in beforehand. But you've checked, and we can't do
3 that --

4 MS. BERAN: Your Honor --

5 THE COURT: -- based on yours and mine?

6 MS. BERAN: Correct, Your Honor. Based on your
7 schedule and my sentence -- Ms. Tavenner and my schedule, we
8 are -- there was nothing that worked next week.

9 THE COURT: All right.

10 MR. EWING: Your Honor, I respectfully ask that --

11 THE COURT: Mr. Ewing, we need you to come --

12 MR. EWING: Oh, sorry.

13 THE COURT: -- because we're recording all of this
14 digitally, and so we need to have you over here. Thank you,
15 sir.

16 MR. EWING: Understood. Then I respectfully ask that
17 the matter be continued out into January, and I'll have to move
18 my trial date in the Hanover circuit court to a later date.
19 But I mean, this is a critical issue.

20 And it was raised that I've had these documents for a
21 long time. It is true, I've had these contracts for a long
22 time. Simply looking at it, I just -- I could not see the
23 issue because it looked legitimate when I first saw it. It
24 wasn't until I took the deposition of someone else that I
25 realized that not everybody signed this addendum. And that's

1 when it became clear that this was something that was being
2 pulled over on me or on my client. And so again, yes, I had
3 the employment contract and I had the addendum for a long time.
4 I just didn't see the issue as clearly as I see it now.

5 THE COURT: But what about the Toshiba opinion that I
6 wrote that said that the procedure that has to be followed is
7 to come to this Court first and request permission to proceed
8 in a state court or get the relief in this Court?

9 MR. EWING: I understand, and that's what should have
10 been done, and it wasn't. We had issued subpoenas directly to
11 the trust before, and here we were sending a subpoena for local
12 individuals to appear at a local court. And if I didn't handle
13 that correctly, I apologize.

14 THE COURT: All right.

15 MS. BERAN: Your Honor, we would respectfully request
16 to put on evidence. Because what Mr. Ewing just testified --

17 THE COURT: Okay. I'm going to let you proceed. I'm
18 going to grant the --

19 MS. BERAN: Thank you.

20 THE COURT: I'm going to grant the -- we're all here.
21 I'll grant the motion to expedite. We can proceed on the
22 underlying motion.

23 MS. BERAN: Thank you. Your Honor, first and
24 foremost, I'd like to call Mr. Ewing to the stand.

25 THE COURT: Okay. Mr. Ewing, please come forward and

1 be sworn.

2 (Witness sworn)

3 DIRECT EXAMINATION

4 BY MS. BERAN:

5 Q. Good morning, Mr. Ewing. Could you please state your name
6 and address for the record?

7 A. Michael Scott Ewing, 3957 Westerre Parkway, Suite 400,
8 Henrico, Virginia 23233.

9 Q. Who are you currently employed by?

10 A. Stiles Ewing Powers, PC.

11 Q. And what, if any, relationship does Stiles Ewing Powers, PC
12 have to Batzli Stiles Butler PC?

13 A. That was a former name of the firm before the partners
14 retired.

15 Q. And what, if any, role does Stiles Ewing Powers, and
16 formerly, Batzli Stiles Butler, play in the case of Fose v.
17 Fose currently pending in the circuit court of Hanover County?

18 A. We represent David Fose.

19 Q. Is Ms. Mollie Barton employed by or an equity member of
20 SEP?

21 A. She's my partner.

22 Q. Is Ms. Andrea Stiles employed by or an equity member of
23 SEP?

24 A. She's my partner.

25 MS. BERAN: And Your Honor, may I approach?

1 THE COURT: All right. Please hand the document to
2 the court security officer.

3 THE COURT: Thank you, sir.

4 Q. Mr. Ewing, do you recognize the document that's been handed
5 to you?

6 A. It appears to be a subpoena duces tecum that was issued by
7 my office, but is not a document that I signed. It appears to
8 be signed by my partner, Mollie Barton.

9 Q. And is it in the matter of Fose v. Fose?

10 A. It is.

11 Q. Do you have any reason to contest the foundation of this
12 document?

13 A. No.

14 Q. Do you have any reason to contest the validity of this
15 document?

16 A. No.

17 MS. BERAN: Your Honor, at this point in time, I'd
18 like to introduce into evidence the document, the subpoena
19 duces tecum.

20 THE COURT: And now, Mr. Ewing, in your capacity as
21 attorney, do you have any objection to the validity of this
22 document?

23 MR. EWING: I don't, Your Honor.

24 THE COURT: Okay. Thank you.

25 All right. It'll be marked as Exhibit 1.

1 (Subpoena duces tecum was hereby received into evidence as
2 Debtors' Exhibit 1, as of this date)

3 THE COURT: Thank you.

4 Q. Mr. Ewing, in connection with your representation of Mr.
5 Fose, do you have the opportunity to review the file that is
6 maintained in connection with that representation?

7 A. I have the opportunity to -- to review it, yes.

8 Q. To the best of your knowledge, is this email contained in
9 that file?

10 A. I don't know. I haven't reviewed that email before.

11 Q. Okay. So sitting here today, you've never seen this email?

12 A. I have not.

13 Q. Okay. Is it in reference to Fose v. Fose?

14 A. It appears to be, yes.

15 Q. And who is it sent to?

16 A. It appears to be from you to Mollie Barton, my partner.

17 Q. And so Mollie Barton was your partner at -- were you
18 previously with Mollie Barton in September of '18?

19 A. Yes.

20 Q. And were you working on this matter in September of '18?

21 A. No, I was not.

22 Q. Is Ms. Barton still working on this matter?

23 A. She was not. She went out on maternity leave, and I took
24 the case over. When she came back, I kept the case.

25 Q. Okay. Do you have any reason to dispute that this email

1 was sent to Ms. Barton and Ms. Stiles?

2 A. I don't.

3 MS. BERAN: Your Honor, at this point in time, I'd
4 like to introduce this as Exhibit 2.

5 MR. EWING: I have no objection.

6 THE COURT: No objection? It'll be admitted without
7 objection.

8 (Email from Ms. Beran to Ms. Barton was hereby received
9 into evidence as Debtors' Exhibit 2, as of this date)

10 Q. Mr. Ewing, do you have any knowledge as to how Ms. Stiles
11 knows me?

12 A. No.

13 Q. Would it surprise you that Ms. Stiles represented me ten
14 years ago in connection with my divorce?

15 A. No.

16 Q. Mr. Ewing, do recognize the document that's been handed to
17 you?

18 A. I don't recognize it. I mean, meaning, that I have not
19 reviewed this document.

20 Q. Do you have any reason to dispute that it was a document
21 sent to Ms. Mollie Barton?

22 A. I don't have any reason to dispute that.

23 Q. And Ms. Mollie Barton, at that point in time, was with the
24 firm of Batzli Stiles Butler?

25 A. Yes.

1 Q. Turning your attention then to Exhibit B, as in boy, do you
2 see an opinion in connection with Exhibit B, as in boy, from
3 this Court, in connection with the Circuit City Stores, Inc., a
4 memorandum opinion in the matter of Toshiba?

5 A. I see it.

6 Q. Have you ever had the opportunity to review this opinion?

7 A. I have not.

8 Q. Was your firm on notice of this opinion?

9 A. I don't know.

10 Q. Are you disputing that this letter was sent to Ms. Barton?

11 A. I told you, I'm not disputing it; I'm just saying I've
12 never seen it, never reviewed it.

13 Q. Is it undisputed that it's an attachment to this exhibit --
14 I mean, to this letter?

15 A. I -- I see that it is attached to the letter.

16 MS. BERAN: Your Honor, at this point in time, I'd like to
17 introduce this letter in as Exhibit 3.

18 THE COURT: Any objection?

19 MR. EWING: I don't object.

20 THE COURT: It will be admitted as Exhibit 3.

21 (Circuit City/Toshiba court opinion in connection with
22 Exhibit B was hereby received into evidence as Debtors' Exhibit
23 3, as of this date)

24 Q. In connection with the letter, back at Exhibit 3, what, if
25 any, documents were received relating to the request that's the

1 purported subpoena?

2 A. I don't know what documents were received in connection
3 with the subpoena. I had reviewed documents. I reviewed the
4 employment contract and the addendum that I had referred to. I
5 don't know, as I sit here, whether that was received from the
6 trust or received directly from Ms. Fose. I don't know that.

7 Q. Would it surprise you, sitting here today, that those
8 documents were provided to your firm on September of 2018?

9 A. If you're asking me if I'm surprised by that, no, I'm not.

10 Q. Mr. Ewing, do you recognize the document that's now been
11 handed you that purports to be a subpoena duces tecum of March
12 22nd, 2019?

13 A. I see that it is, and I see that it's signed by my partner
14 Mollie Barton.

15 MS. BERAN: Your Honor, at this point in time, I'd
16 like to introduce that into evidence.

17 MR. EWING: No objection.

18 THE COURT: All right. Thank you. It'll be marked as
19 Exhibit 4.

20 (March 22nd, 2019 subpoena duces tecum was hereby received
21 into evidence as Debtors' Exhibit 4, as of this date)

22 Q. Do you know, to the best of your knowledge, did SEP obtain
23 leave of this Court before issuing said subpoena?

24 A. I don't know.

25 Q. Mr. Ewing, do you recognize the document that's been handed

1 to you right now with the date of March 13th, 2019?

2 A. I have not reviewed that document.

3 Q. Do you know who it's written to?

4 A. It appears to be written to my partner, Mollie Barton.

5 Q. And who is it from?

6 A. From your office.

7 Q. Do you have any reason to doubt that this document is in
8 the file of the Fose matter?

9 A. I don't know whether it is or not, but if you're saying you
10 sent it, then I'm assuming you did.

11 MS. BERAN: Your Honor, at this point in time, I'd
12 like to introduce it as Exhibit 5.

13 MR. EWING: No objection.

14 THE COURT: All right. It's being admitted as Exhibit
15 5.

16 (March 13th, 2019 email from Tavenner & Beran to Mollie
17 Barton was hereby received into evidence as Debtors' Exhibit 5,
18 as of this date)

19 Q. Mr. Ewing, sitting here today, are you aware of what, if
20 any, documents SEP received in connection with that letter?

21 A. I am not. I don't want to be evasive. I know I have
22 contracts that Ms. Fose signed. I know I have some document
23 about a payment history, I believe. She's no longer employed
24 there, and there was an issue in the case about whether she was
25 voluntarily unemployed or underemployed. And I believe those

1 documents were relevant to that issue. I don't know that
2 that's still an issue in the case. I haven't reviewed those
3 payment records at any time recently. I did review the
4 contracts that I mentioned earlier in my opening statement.
5 Again, I don't know whether those contracts were obtained from
6 your office or obtained from Mrs. Fose personally or both.

7 Q. Thank you. Mr. Ewing, did you have the opportunity to
8 depose Mr. Jeff McDonald on November 21st, 2019?

9 A. I did.

10 Q. Was his attendance at said deposition subject to a
11 subpoena?

12 A. It was.

13 Q. Did you obtain leave of this bankruptcy court before
14 issuing said subpoena?

15 A. I did not.

16 Q. Did you provide a courtesy copy of said subpoena to any
17 member of Tavenner & Beran?

18 A. I did not.

19 Q. Is --

20 A. I did not know that that witness was represented by
21 counsel. He voluntarily appeared to receive service of the
22 subpoena, and he voluntarily came -- he was very cooperative
23 and he came to the deposition, and he didn't indicate that he
24 was represented by counsel.

25 Q. At any part of that subpoena, did you indicate that you

1 were seeking to depose him as a representative of the trust?

2 A. I think it was just a standard witness subpoena to appear
3 for the deposition.

4 Q. So isn't it true that, at said deposition, you questioned
5 Mr. McDonald about documents contained in Ms. Fose's personnel
6 file with the Circuit City Liquidating Trust?

7 A. I don't know what's in her personnel file, but I did -- I
8 did show him a copy of the contract that she signed, dated
9 November 1st, 2017, the addendum that she signed, dated
10 December 1st, 2017, a letter that was written to her by the
11 trustee, dated March -- I mean, April 30th, 2018, and I believe
12 a letter that was written to her by the trustee, dated October
13 30th, 2018. Those were the dates where she received her
14 bonuses.

15 Q. Mr. Ewing, isn't it true that, at said deposition, you were
16 really questioning Mr. McDonald as a representative of the
17 Circuit City Liquidating Trust?

18 A. I questioned him about his relationship with Mrs. Fose.
19 They had a personal relationship. And there were issues in the
20 case involving my client's relationship with her daughter and
21 whether he was a good father to that -- I said daughter; I
22 meant son -- whether he was a good father to that son. And
23 she'd made claims that he was not supportive, and that sort of
24 thing. And I questioned Mr. McDonald about conversations he
25 had with Mrs. Fose about those issues. I don't think that had

1 anything to do with his employment at the trust, although some
2 of those conversations, I think, took place at work.

3 I then asked him about those contracts that I mentioned
4 and whether he had signed similar contracts. He said that he
5 had. And I asked him whether he had signed an addendum like
6 that, and he said he had not, and he had also not received a
7 letter similar to the one given to Mrs. Fose, all of which
8 tending to indicate that her bonus was earned after the date of
9 separation and not before. That was basically the substance of
10 the entire deposition.

11 Q. Would it be accurate to state that the large percentage of
12 that deposition involved matters relating to the Circuit City
13 Liquidating Trust?

14 A. I don't think so. I think more it had to do with the
15 personal matters. Mr. McDonald was very deliberate, took a lot
16 of time in his testimony, which was fine. But the deposition
17 probably lasted maybe 20 minutes when it was probably ten
18 minutes worth of questions. But I do think the majority of the
19 time took -- was taken with him talking about his personal
20 relationship with Mrs. Fose. But I'm not denying that I asked
21 about those contracts that I just mentioned earlier.

22 Q. Mr. Ewing, do you recognize the document that's been handed
23 to you that has the title of "Notice to take deposition"?

24 A. That is the notice to take deposition that I had prepared.
25 I signed it. It looks like I certified it on December the 9th,

1 2019.

2 Q. Did you obtain leave of this bankruptcy court before
3 issuing said subpoena?

4 A. I only testified to the notice to take deposition.

5 Q. No, I apologize.

6 A. But there does appear to be a subpoena that's attached to
7 this exhibit. It is another document that I signed. And to
8 answer your question, no, I did not obtain the leave of the
9 Court to issue that subpoena.

10 Q. Did you provide a courtesy copy of said subpoena to any
11 member of Tavenner & Beran?

12 A. No, I did not know that Ms. Bradshaw was represented by
13 counsel.

14 Q. Did you and/or your firm know that the Circuit City
15 Liquidating Trust was represented by counsel?

16 A. I -- I don't know how to answer that. I didn't think about
17 that, so I don't -- I don't know that I knew or didn't know.
18 Just something I did not consider.

19 Q. I mean, isn't it true that the notice to take the
20 deposition and the --

21 MS. BERAN: Strike that; I apologize.

22 Q. Do you know when this notice to take deposition and
23 subpoena was actually served on Ms. Bradshaw?

24 A. It was earlier this week, and it's my understanding that
25 they called the private -- "they" being Ms. Bradshaw and Mr.

1 McDonald, contacted the private processor and scheduled a time
2 for him to come and serve that. I'm not sure what day that
3 was, whether it was Monday or Tuesday.

4 Q. Would it surprise you that it was Tuesday afternoon?

5 A. It would not.

6 THE COURT: I didn't hear your last question.

7 MS. BERAN: Would it surprise you that it was Tuesday
8 afternoon?

9 THE COURT: Okay. Thank you.

10 MS. BERAN: Your Honor, at this point in time, I'd
11 like to introduce this into evidence as Exhibit 6.

12 MR. EWING: No objection.

13 THE COURT: All right. It'll be introduced as Exhibit
14 6.

15 (Notice to take deposition was hereby received into
16 evidence as Debtors' Exhibit 6, as of this date)

17 Q. And I apologize. In connection with -- and put that aside
18 for one moment. In connection with your desire to depose Ms.
19 Bradshaw, isn't it true that you intend to question Ms.
20 Bradshaw about an addendum to Mrs. Fose's employment agreement
21 dated December 1st, 2017?

22 A. Yes.

23 Q. And isn't it your intention to question Ms. Bradshaw about
24 why the addendum was executed?

25 A. Yes.

1 Q. And whether Mrs. Fose requested it?

2 A. Yes.

3 Q. Is that substantially all you seek to solicit from Ms.

4 Bradshaw's testimony at the deposition?

5 A. The sole purpose of deposing or questioning Ms. Bradshaw is
6 about that addendum, why it was executed, who requested it.

7 That's -- that's correct. And in sum, in general, that's it.

8 Q. So notwithstanding that the subpoena doesn't specifically
9 provide that you seek to depose Ms. Bradshaw as a
10 representative of the trust, you are really seeking to depose
11 her as a trust representative, correct?

12 A. I don't know. I don't know what that means. I intended to
13 talk to her about her personal conversations with Ms. Fose
14 because I think this addendum is unusual and unique to one
15 employee. That's what I want to ask her about.

16 Q. So you're disputing that the point of the deposition is to
17 ask Ms. Bradshaw about the addendum to Ms. Fose's employment
18 agreement dated December --

19 A. That's -- I'm not disputing that. That is the purpose.

20 Q. And now turning your attention to the document that's been
21 handed to you that says "subpoena for witness, date for trial
22 on 1/2/20"; do you recognize that document?

23 A. Yes, that's a witness subpoena that I signed and issued on
24 December the 5th, 2019 to Katie Bradshaw --

25 Q. And --

1 A. to appear at -- in the Hanover Circuit Court on January
2 2nd, 2020.

3 Q. And do you know when this document was served on Ms.
4 Bradshaw?

5 A. I believe it was the same time as the other document, as
6 the other subpoena.

7 Q. So would it surprise you that it was served on the
8 afternoon of Tuesday, December 10th?

9 A. No.

10 MS. BERAN: Your Honor, at this point in time, I'd
11 like to introduce it into evidence.

12 MR. EWING: No objection.

13 THE COURT: All right. It'll be -- this will be
14 number 7.

15 (Subpoena for witness for trial on 1/2/20 was hereby
16 received into evidence as Debtors' Exhibit 7, as of this date)

17 Q. And once again, isn't it true that what you intend to
18 solicit from Ms. Bradshaw at the trial is related to Ms. Fose's
19 employment agreement, dated December 1, 2007 (sic), and related
20 addendums?

21 A. The employment agreement is dated November 1, 2017; the
22 addendum is December 1st, 2017. And yes, that's what I intend
23 to ask her about.

24 Q. So notwithstanding that the subpoena doesn't specifically
25 provide that you seek to depose -- I mean, seek to have Ms.

1 Bradshaw appear at trial as a representative of the trust,
2 aren't you really seeking to have her appear as a
3 representative of the trust?

4 A. I didn't think of it that way, but -- that's your
5 conclusion; I didn't think of it that way. And to question her
6 about her personal interaction with Katie -- with Mrs. Fose and
7 discussions that they had about this addendum and whether Mrs.
8 Fose requested that an addendum like this be executed so that
9 she could protect these bonuses in her divorce case.

10 MS. BERAN: Your Honor, I apologize. I think we
11 introduced that as Exhibit 7, did we?

12 THE COURT: Yes, we did.

13 Q. Mr. Ewing, do you recognize what's been handed to you as of
14 right now?

15 A. Yes, it's an email exchange that you and I had last night
16 at -- well, it's an email I sent to you at 5:38 p.m. yesterday
17 from my cell phone.

18 Q. And in said email, don't you concede that: "I'm sure
19 you're already aware of the issues with the restructuring of
20 Mrs. Fose's bonus in 2018"?

21 A. Yes, I was telling you that that is the issue in the case.

22 MS. BERAN: Your Honor, at this point in time, I'd
23 like to introduce that as Exhibit number 8.

24 MR. EWING: No objection.

25 THE COURT: All right. It'll be admitted as Exhibit

1 8.

2 (Email dated 12/11/19, 5:38 p.m., from Mr. Ewing to Ms.
3 Beran was hereby received into evidence as Debtors' Exhibit 8,
4 as of this date)

5 Q. Do you recognize the document that's now been handed to
6 you?

7 A. It's the same email exchange; it's you replying back to me
8 at 5:55 p.m. yesterday.

9 MS. BERAN: Your Honor, at this point in time, I'd
10 like to introduce into evidence that as Exhibit number 9.

11 MR. EWING: No objection.

12 THE COURT: All right. It'll be admitted as Exhibit
13 9.

14 (Email response, dated 12/11/19, 5:55 p.m., from Ms. Beran
15 to Mr. Ewing was hereby received into evidence as Debtors'
16 Exhibit 9, as of this date)

17 Q. Mr. Ewing, do you recognize the document that's been handed
18 to you?

19 A. This is me replying back to you, in the same series of
20 emails, yesterday, 6:16 p.m., in which I proposed to continue
21 the deposition on Monday, postpone the hearing, and try to work
22 out this matter. Yes, I sent that email to you.

23 Q. And above, don't you indicate that what you intend to
24 address is the addendum to Mrs. Fose's employment agreement
25 dated December 1st, 2017?

1 A. Yes.

2 MS. BERAN: Your Honor, if I haven't already, I'd like
3 to introduce this document as Exhibit 10.

4 THE COURT: Okay. It'll be admitted as 10.

5 (Email dated 12/11/19, 6:16 p.m., from Mr. Ewing to Ms.
6 Beran was hereby received into evidence as Debtors' Exhibit 10,
7 as of this date)

8 Q. Mr. Ewing, do you recognize the document that's been handed
9 to you now?

10 A. Same series of emails from last night. You replied back to
11 me at 6:0 -- I mean, at 7:06 p.m., stating that you would talk
12 to your client and get back in touch with me.

13 Q. And I also explained the reason for the delay in my
14 response, and that I was driving?

15 A. You did. And I was driving too. In fact, I was sitting in
16 a restaurant parking lot.

17 MS. BERAN: Your Honor, at this point in time, we'd
18 like to introduce this into evidence as Exhibit 11.

19 THE COURT: Any objection?

20 THE COURT: No obligation.

21 (Email dated 12/11/19, 7:06 p.m., from Ms. Beran to Mr.
22 Ewing was hereby received into evidence as Debtors' Exhibit 11,
23 as of this date)

24 Q. Mr. Ewing, do you recognize the document that's now been
25 handed to you?

1 A. I do recognize this, and it is an email from me to you last
2 night at 9:40 p.m.

3 Q. And going a little bit further down in the chain, is there
4 also an email --

5 A. I haven't finished my answer.

6 Q. I'm sorry.

7 A. This email is in response to an email that you sent me that
8 you have not introduced, and in that email you made proposals
9 on how I could obtain this information, through very limited
10 means, asking three limited questions and stipulating
11 testimony.

12 And I indicated in this email that, at almost 10 o'clock
13 at night, I could not agree to that. One, I didn't have
14 authority from my client. And two, it was asking me to
15 stipulate testimony of a witness that had also been subpoenaed
16 by Ed Barnes, Mrs. Fose's attorney. I obviously could not
17 agree to a stipulation without Mr. Barnes being involved. I
18 couldn't agree to a stipulation of anything without an
19 agreement from Mr. Barnes that I could introduce it in the
20 Hanover circuit court. So I could not agree to that at 9:40
21 p.m. last night.

22 Q. Mr. Ewing, can you go down a little bit further in that
23 document, where I do include in this document the email of my
24 email to you at 9:16, wherein as I said, "I have now had the
25 opportunity to discuss with my client representative, and after

1 the same am authorized to agree as follow. And can you turn to
2 point number --

3 A. I didn't notice that this had a -- that this was printed on
4 the back of a page too. I thought you had cut off the whole
5 email.

6 Q. Can you turn your attention to paragraph number 6 that
7 reads: "On or before December 20th, the parties shall try to
8 agree as to the logistics and limited nature of the testimony
9 of Mr. McDonald at the trial. If no such resolution is
10 reached, the motion will be heard on a date in December as
11 provided by the bankruptcy court."

12 A. That's what you said.

13 Q. Does that contradict your previous testimony about I was
14 trying to make you stipulate to Mr. McDonald's trial testimony
15 last night?

16 A. Well, you were trying to get me to stipulate to three
17 questions to Ms. Bradshaw. And again, I could not do that at
18 9:40 p.m. the night before --

19 Q. Yeah, but didn't I --

20 A. -- without Mr. Barnes being --

21 Q. -- offer to answer your questions through the form of three
22 questions to Ms. Bradshaw?

23 A. You did, and that's not sufficient, and I could not agree
24 to that without my client -- talking to my client and talking
25 to Ms. Barnes.

1 You answering my questions does not allow me to introduce
2 that in the Hanover circuit court.

3 Q. But then, earlier in the conversation, you indicated that
4 your questions were pretty straightforward and were very
5 limited nature.

6 Q. I believe they are.

7 MS. BERAN: Your Honor, at this point in time, I'd
8 like to introduce that into evidence as Exhibit 12.

9 THE COURT: Any objection?

10 MR. EWING: No objection, Your Honor.

11 THE COURT: Thanks. It'll be admitted as 12.

12 (Email dated 12/11/19, 9:40 p.m., from Mr. Ewing to Ms.
13 Beran was hereby received into evidence as Debtors' Exhibit 12,
14 as of this date)

15 Q. Do you recognize the document that has been handed to you?

16 A. This is a witness subpoena that I signed on December 5th,
17 2019, subpoenaing Jeff McDonald to the trial in this matter on
18 January 2nd, 2020. There's also a subpoena like this for Mr.
19 Barnes, being the same witness to the same trial.

20 Q. Did you issue this subpoena --

21 MS. BERAN: Strike that. I apologize.

22 Q. Did you obtain leave of court before you issued this
23 subpoena?

24 A. I did not.

25 MS. BERAN: Your Honor, at this point in time, I'd

1 like to introduce it as Exhibit 13.

2 THE COURT: Any objection?

3 MR. EWING: No, Your Honor.

4 (Subpoena of Mr. McDonald was hereby received into evidence
5 as Debtors' Exhibit 13, as of this date)

6 Q. Sitting here today, Mr. Ewing, do you have any evidence to
7 demonstrate that Mr. Barnes seeks to have Mr. McDonald testify
8 to trust matters?

9 A. I don't know what he intends to talk to him about.

10 Q. And if his trial testimony was solely for the purposes of
11 personal relationships, do you believe that you would need to
12 obtain leave of court from this Court?

13 A. I have no idea.

14 Q. Would it surprise you that we were in contact with Mr.
15 Barnes to see the nature of that testimony?

16 A. I have no idea.

17 Q. To the best of your knowledge, has Mr. Barnes tried to
18 depose Mr. McDonald in connection with any representations in
19 connection with his employment at the trust?

20 A. As I sit here right now, I cannot remember whether Mr.
21 Barnes asked Mr. McDonald questions at his deposition. I just
22 can't remember.

23 Q. Mr. Ewing, isn't it true that your law firm have had the
24 documents at issue for over fifteen months but did nothing
25 until this Tuesday to seek information about the same from the

1 trust?

2 A. I don't know how long we've had these documents. We have
3 had them, as I've represented to the Court earlier. The
4 significance of these documents did not become clear to me
5 until recently. They seemed legitimate to me at first. Now
6 they do not.

7 Q. Isn't it true that your law firm has known, for over
8 fifteen months, of the need to seek leave of this Court for
9 permission to issue subpoenas but has never done so?

10 A. I don't know the answer to that.

11 Q. Isn't it true that SEP, that notwithstanding that it has
12 known for over fifteen months of the need to seek leave of this
13 Court for permission to seek for subpoenas but has never done
14 so, it has nonetheless attempted to issue at least four, if not
15 six,7 subpoenas directed at the trust or its representatives?

16 A. I've issued the subpoenas that have been introduced.

17 Q. Thank you.

18 MS. BERAN: Your Honor, if I may beg the Court's
19 indulgence for a moment?

20 THE COURT: You may.

21 MS. BERAN: Mr. Ewing, I have no additional questions.
22 Please answer any questions that the Court may have.

23 THE COURT: I don't have any questions, but what I am
24 going to do, if you want to make any kind of statement that you
25 want as part of the evidence of this proceeding, you can do

1 that in lieu of the ability to cross-examine yourself.

2 CROSS-EXAMINATION

3 BY PROFFER:

4 MR. EWING: Okay. Thank you, Your Honor. I took this
5 case over, I think back last -- this past summer from Ms.
6 Barton who was handling it. She went out on maternity leave,
7 so I took it over, and I have kept it since then because the
8 trial was scheduled on January 2nd.

9 I believe that there was some interaction between the
10 trust and subpoenas that were issued directly to the trust. I
11 am sure that they produced some limited documents. I don't
12 know what those documents are right now. I have reviewed the
13 documents that I had testified to earlier. I did issue the
14 subpoenas that -- that I had issued in this case. I've
15 explained why I issued them.

16 As far as this hearing and all of this stuff that's
17 going on today, someone could have picked up the telephone and
18 called me and talked to me about this, and this would not have
19 been necessary. And I would have dealt with the deposition on
20 Monday, as I tried to deal with it last night, sitting in my
21 car in a parking lot.

22 I don't believe any of this is necessary. I've read
23 in the pleadings that there's concerns about the cost of the
24 trust and that type of thing and the cost to the trust of this
25 hearing. Not one telephone call to me that could have resolved

1 that.

2 I'm not saying -- I don't know whether issuing the
3 subpoenas as I did violated this Court's order. I don't know
4 that, as I'm sitting here. Should I know that? Probably so.
5 But I don't. I don't know it. And I haven't had an
6 opportunity to consult with an attorney about that. I'm just
7 telling you, truthfully, what I did. And there obviously were
8 things that could have been done to avoid this and avoid all of
9 this cost.

10 And the information that I'm trying to obtain from
11 these witnesses actually has nothing to do with the operation
12 of the trust. It has nothing to do with the trust finances.
13 It has nothing to do with any matters, in my opinion, that
14 would be pending before this Court because the trust paid the
15 money that it agreed to pay, and it paid it on the dates that
16 it agreed to pay it. They simply executed an addendum that
17 changed some language to help out an employee in her divorce
18 case. Again, there's no creditor that has been defrauded in
19 that, no money has been transferred to her that would have gone
20 to someone else. They simply changed some language in a
21 document.

22 That's what happened. That's the facts. I don't know
23 what else to say but that. And I apologize to the Court if I
24 have done something inappropriate.

25 THE COURT: All right. Thank you, sir.

1 MS. BERAN: Your Honor, I do have --

2 THE COURT: May this witness step down?

3 MS. BERAN: No, I do have some redirect based on
4 something he just said.

5 THE COURT: All right.

6 REDIRECT EXAMINATION

7 BY MS. BERAN:

8 Q. Mr. Ewing, what evidence do you have today to support your
9 statement that the Circuit City Liquidating Trust changed
10 documents to benefit Mrs. Fose in her divorce?

11 A. You said "change" the document, and I probably said
12 "changed" the document. They amended her contract. They
13 amended it to say that after she received a bonus on April
14 30th, if she was terminated for any reason after that, she
15 would have to pay that bonus back. Well, that's a much worse
16 employment agreement term for her. And why would she sign
17 that? What consideration was there possibly for her to sign a
18 I don't understand it. I don't see how
19 it -- how it helped Circuit City. They paid the same money on
20 the same dates. I don't see how -- except for the divorce
21 case --

22 Q. Again, what evidence do you have, sir, to support your
23 position that Circuit City Liquidating Trust did something to
24 benefit Mrs. Fose in connection with the divorce? What
25 evidence?

1 A. I have -- I have --

2 Q. Not your opinion; what evidence?

3 A. I have the documents that show that that was done. They
4 speak for themselves. They don't make sense. And I also had
5 taken the deposition of Mr. McDonald, who is an employee that
6 was similarly situated to Mrs. Fose, and he didn't sign an
7 addendum like that, and his contract was not changed. And so
8 that doesn't make sense to me.

9 Q. Would it surprise you, Mr. Ewing, that those documents
10 arose from a dispute with another Circuit City Liquidating
11 Trustee employee as she was leaving?

12 A. Maybe. May -- that might have happened. Someone could
13 tell me that very easily, if someone would talk to me about it.

14 Q. I'm sorry; in fifteen months, have you ever picked up the
15 phone and asked to speak with a representative of the Circuit
16 City Liquidating Trust?

17 A. As I said, I became aware -- this problem became clearer to
18 me in the last few weeks then it was before, because it looked
19 legitimate to me before, because the trust was winding down, I
20 thought that they might have been adjusting their payment
21 compensation plan because of that, because the trust might end
22 in the middle of her employment contract. So it seemed
23 legitimate to me. And then as it went on I started to realize
24 that it wasn't legitimate, at least in my opinion.

25 Q. In the last several weeks, did you pick up the phone to try

1 and talk to any representative of Circuit City Litigation
2 Trust?

3 A. I did not. I did not. I issued the subpoena.

4 Q. Would it surprise you that those employment contracts were
5 actually revised, in connection with that dispute, by a
6 separately retained employment lawyer?

7 A. I don't have any idea. I just know that Mr. McDonald's
8 contract was not revised because he said so.

9 Q. Would it surprise you that every employee at Circuit City
10 Liquidating Trust, as a term of their employment going forward,
11 actually did sign the revised contract?

12 A. I just know that Mr. McDonald said he didn't. There's
13 only, like, four employees in the trust, and one, who is
14 similarly-situated to her, did not sign it. That caused me to
15 be concerned about it, and that caused me to issue the -- the
16 second set of subpoenas that I did.

17 MS. BERAN: I have no additional questions. Thank
18 you.

19 THE COURT: All right. Unless you have something
20 else, you may step down.

21 All right. Thank you for your testimony, Mr. Ewing.

22 MS. BERAN: Your Honor, at this point in time, I'd
23 like to call Ms. Bradshaw to the stand.

24 THE COURT: All right. We're running out of time, so
25 hurry it up.

1 (Witness sworn)

2 DIRECT EXAMINATION

3 BY MS. BERAN:

4 Q. Good morning, Ms. Bradshaw. Could you please state your
5 name and address for the record?

6 A. Katie Bradshaw, 200 Westgate Parkway, Suite 100, Richmond,
7 Virginia 23233.

8 Q. And what position do you currently have at the Circuit City
9 Liquidating Trust?

10 A. I'm the senior trust officer.

11 Q. And how long have you been with the Circuit City
12 Liquidating Trust?

13 A. Since the beginning, November 1st, 2010.

14 MS. BERAN: Your Honor, I apologize. Do you have the
15 witness exhibits? Are they up there?

16 THE COURT: Do we have one back here? This is the --
17 have you provided copies of all of these documents to Mr.
18 Ewing?

19 MS. BERAN: Your Honor, I have not. Substantially all
20 of them were attached to the motion yesterday, with the
21 exception of the emails from last night.

22 But Your Honor, if I may approach and just give
23 Exhibit 1 to Ms. Bradshaw?

24 THE COURT: Has Mr. Ewing seen that document?

25 MS. BERAN: Yes, Your Honor.

1 THE COURT: I don't know what you're --

2 MS. BERAN: It's the same ones I asked him about.

3 THE COURT: Oh, okay.

4 MS. BERAN: It's already been introduced into
5 evidence.

6 THE COURT: Very good. If you want these copies, you
7 can have them.

8 You may hand the documents to Ms. Bradshaw.

9 MS. BERAN: Your Honor, I'm just trying to see the
10 order for my presentation. I apologize.

11 BY MS. BERAN:

12 Q. Ms. Bradshaw, I think if you start that way and flip.

13 A. Yes.

14 Q. Ms. Bradshaw, do you recognize the document that is a
15 subpoena dated September 26th, 2018?

16 A. I do.

17 Q. And did you receive a copy of that document?

18 A. Yes.

19 Q. And what did you do upon receipt?

20 A. I called Tavenner & Beran to determine the best way to move
21 forward to answer it or respond.

22 Q. Can you turn to the -- I think it's the third document
23 there in that stack. Have you ever seen this letter dated
24 September 14th, 2018?

25 THE COURT: What number is this?

1 MS. BERAN: This is Exhibit number 3.

2 THE COURT: Okay. Thank you.

3 Q. It should be in the stack.

4 A. It's the email?

5 Q. No, the next document.

6 A. Next --

7 Q. Exhibit number 3?

8 A. Okay. Yes. Sorry.

9 Q. Ms. Bradshaw, have you ever seen this letter?

10 A. Yes.

11 Q. And in connection with that, did you authorize the sending
12 of this -- did you review this letter before it was sent?

13 A. Yes.

14 Q. And in connection with it, are you cc'd on this letter?

15 A. Yes.

16 Q. And turning your attention to page 2 of this document, did
17 you provide that information to me --

18 A. Yes.

19 Q. -- as it relates to the answers?

20 A. I did.

21 Q. And to the best of your knowledge, were the documents at
22 issue included in connection with the response to this letter?

23 A. Yes.

24 Q. So you believe, sitting here today, that the documents were
25 provided to Mr. Fose and his counsel back in September of '18?

1 A. Yes.

2 Q. Ms. Bradshaw, if you could flip to the subpoena that's
3 dated March 22nd, 2019?

4 A. Yeah.

5 Q. Ms. Bradshaw, do you recognize that document?

6 A. Yes.

7 Q. Upon receipt, what did you do?

8 A. I called Tavenner & Beran to determine how to respond.

9 Q. Turning your attention then to a letter that's dated March
10 13th, 2019, do you recognize that document?

11 A. Yes.

12 Q. Did you authorize Tavenner & Beran to send that before it
13 was sent?

14 A. I did.

15 Q. And to the best of your knowledge, were additional
16 documents provided in March of 2019 --

17 A. Yes.

18 Q. -- consistent with the request?

19 A. Um-hum.

20 Q. Ms. Bradshaw, if you could turn your attention then to
21 Exhibit number -- well, your notice to take deposition; it's
22 Exhibit number 6.

23 A. Yes.

24 Q. Do you recognize that document?

25 A. Yes.

1 Q. And when did you receive a copy of Exhibit number 6?

2 A. I received it the afternoon of December 10th.

3 Q. And upon receipt, what did you do?

4 A. I talked to Tavenner & Beran, and I scanned an email to
5 them to review and determine a course forward.

6 Q. And did you have to have discussions with Mr. Siegel in
7 connection with the trust's response to the same?

8 A. Yes.

9 Q. And did you seek independent counsel to represent you and
10 Mr. McDonald as well?

11 A. We did.

12 Q. And was counsel able to, relatively quickly, clear
13 conflicts?

14 A. Yes, absolutely.

15 Q. And sitting here today, are you represented individually
16 now by counsel?

17 A. Yes.

18 Q. And who is that counsel?

19 A. Vern Inge.

20 Q. Okay. Ms. Bradshaw, if you can flip to the document that
21 is a subpoena for witness dated for a trial on 1/2/20?

22 A. Yes.

23 Q. Ms. Bradshaw, when did you receive a copy of that?

24 A. I received it the same time as the one for the deposition,
25 so Tuesday afternoon, December 10th.

1 Q. And Ms. Bradshaw, did you take the exact same steps in
2 connection with the deposition subpoenas and notice?

3 A. Yes, I scanned both together and forwarded them on.

4 Q. Okay. Similarly, Ms. Bradshaw, did you do all the steps as
5 it relates to speaking with the trustee as to how to handle and
6 address these matters?

7 A. Yes.

8 Q. Ms. Bradshaw, do you feel like the Circuit City Liquidating
9 Trust has tried to accommodate every request that Mr. Fose has
10 made?

11 A. I do. You know, the first two we received, and we sent the
12 letters that, you know, have been referenced here, and provided
13 all of the information that was requested, and contract copies
14 from Ms. Fose's personnel file that have been referred to.

15 Q. Okay. Ms. Bradshaw, will you be in the Commonwealth of
16 Virginia on January 2nd, 2020?

17 A. No, I will not be.

18 Q. And Ms. Bradshaw, where will you be?

19 A. Disney World.

20 Q. And Ms. Bradshaw, how long have you known that you would be
21 at Disney World?

22 A. Since about this time last year.

23 Q. Ms. Bradshaw, did there come a point in time where there
24 was a dispute about the meaning of the Circuit City Liquidating
25 Trust employment agreements?

1 A. Yes.

2 Q. And about when was that dispute?

3 A. That was in the fall of 2017.

4 Q. And was Ms. Fose involved in that dispute?

5 A. No.

6 Q. Did Circuit City Liquidating Trust employ employment
7 counsel to address the dispute?

8 A. We did, David Nagle.

9 Q. And to the best of your knowledge, what was the result of
10 said dispute?

11 A. There was a settlement agreement reached between the
12 employee that it involved and the trust that was confidential
13 and resolved it.

14 Q. Who at the Circuit City Liquidating Trust had interfaced
15 with Mr. Nagle?

16 A. Just myself.

17 Q. To the best of your knowledge, did Mr. Nagle ever have any
18 discussions with Ms. Fose?

19 A. Not to my knowledge, no.

20 Q. To the best of your knowledge, did Mr. Nagle ever even know
21 that Ms. Fose was having marital difficulties?

22 A. No, I don't know how he could have possibly known.

23 Q. Did you sign the employment contract at issue?

24 A. Yes.

25 Q. And to the best of your knowledge, did every employee of

1 Circuit City Liquidating Trust execute the revised employment
2 agreement?

3 A. Yes.

4 Q. And do you know why that employment agreement was revised?

5 A. Well, at the time, the dispute with the other employee was
6 pretty -- a hot topic, I'll say, and Ms. Fose definitely took
7 exception with the way the contract was being interpreted. And
8 so she had a very strong relationship with our trustee and had
9 conversations with him. And I believe that it was issued to
10 clarify the contracts that we had at -- you know, the new
11 revised one, once the matter was resolved with the other
12 employee that had left.

13 Q. And what, if any, feelings were there about lawyer
14 interference?

15 A. Well, I think that some at the trust believed that we had a
16 certain view of how to interpret the bonus payments in the
17 contract, and the attorneys had a different interpretation of
18 that, which caused conflict.

19 Q. So sitting here today, are you aware of any instance where
20 the Circuit City Liquidating Trust, or any representative of
21 the Circuit City Liquidating Trust, changed any document in
22 connection with or to benefit Ms. Fose in connection with her
23 divorce proceedings?

24 A. No, I first saw that amendment once it was signed and given
25 to me to place in her personnel file.

1 MS. BERAN: Okay. Thank you, Ms. Bradshaw. I have no
2 additional questions. Please answer any questions that may be
3 asked of you by Mr. Ewing.

4 THE COURT: Mr. Ewing, do you have any questions?

5 MR. EWING: Yes, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. EWING:

8 Q. Was Mrs. Fose required to sign the addendum?

9 A. I really don't know the answer to that. Like I said, I
10 received it once it was signed by her and our trustee, and
11 didn't ask any questions about it.

12 Q. You signed the same addendum?

13 A. I did not.

14 Q. You said all of the employees signed the same addendum.

15 A. We signed the same employment agreement, which our
16 employment agreements were revised as a result of the matter
17 that we talked about with the former employee. And Mr. Nagle,
18 who we had hired to represent us in this employment matter, the
19 trust, revised those agreements to align with the attorneys'
20 interpretation of that bonus payout. And we all signed that
21 same employment agreement with the same language.

22 Q. That was a subsequent agreement to the one that you signed
23 on November 1st, 2017, correct?

24 A. Well, that was the next one, because we were renewing them,
25 you know, as the old ones expired.

1 Q. You're saying that you had a contract that was November 1,
2 2017 that went through October 30th, 2018, correct?

3 A. That's right.

4 Q. And then the one that you signed after that is the one that
5 you're saying was revised, based upon this lawyer's
6 interpretation of the terms, correct, the new contract?

7 A. Well, that one that we signed on November 1st, 2017, was
8 the revised language.

9 Q. Okay. So your contract on November 1st 2017, through
10 October 30th 2018, that remained in place, correct, you never
11 signed an addendum to that contract?

12 A. That's right.

13 Q. And so the addendum that Ms. Fose signed on December 1st,
14 2017, that was unique to her; she's the only that signed that;
15 is that correct?

16 A. As far as I know.

17 Q. And that was based upon conversations between her and the
18 trustee, because she had a good relationship with him, correct?

19 A. That's correct.

20 MR. EWING: That's all the questions I have.

21 THE COURT: All right. Thank you.

22 May this witness step down?

23 MS. BERAN: Yes, Your Honor.

24 THE COURT: All right. Thank you for your testimony,
25 Ms. Bradshaw.

1 MS. BERAN: Your Honor, at this point we have no
2 additional evidence.

3 THE COURT: All right. Do you have any more evidence?

4 MR. EWING: No, Your Honor.

5 THE COURT: Okay. So Ms. Tavenner?

6 MS. TAVENNER: For the record again, Your Honor, Lynn
7 Tavenner of the law firm of Tavenner & Beran. I recognize that
8 you have a limited amount of time this morning, and I will not
9 go in full through the argument that I had prepared.

10 Your Honor, the evidence is clear. Your Honor has
11 jurisdiction under the confirmation order and the trust
12 document. Opposing counsel has been aware of this for over
13 fifteen months with respect to that jurisdiction. I'm sorry
14 that there has been some type of change in leadership with
15 regard to the file, with respect to Mr. Fose's representation,
16 but the information has been there for that lengthy amount of
17 time.

18 Mr. Fose's actions are egregious, and they're
19 especially egregious when you consider that the trust has
20 already provided all of the available information with respect
21 to Ms. Fose's employee file on two separate occasions.

22 To try and now extrapolate some type of legal theory,
23 based on what is or is not in someone else's personal and
24 confidential file, goes way beyond the bounds of the law and is
25 completely contrary to Your Honor's prior Toshiba ruling, and

1 especially when they just ignored this Court, the Barton
2 doctrine, the trust and its professionals.

3 But we have bent over backwards for the past fifteen
4 months. And Your Honor, all of this is just an unjustified
5 scavenger hunt. They have the employee information; they just
6 don't like the information. Now they're trying to ascribe
7 something nefarious to the fact that there was a change in the
8 employment terms around November/December 2017. This is
9 exactly why, Your Honor, jurisdiction was stayed with this
10 Court. This nefarious tale did not occur. Your Honor is well
11 aware that the trust during that time was downsizing.
12 Employees were starting to see the end of their jobs, and some
13 were questioning the specific import of their agreements that
14 they had with the trust. They thought they may have said
15 something different than it did.

16 Indeed, one former employee went to the degree of
17 hiring counsel. And while those issues were resolved
18 consensually and confidentially, with the assistance of the
19 trust hiring additional employment counsel, Mr. David Nagle,
20 the trust, during that time frame, did have to rely on the
21 advice of employment counsel. And once that was resolved, it
22 sought from that employment counsel to assist in the drafting
23 of future agreements that were offered to these remaining
24 employees.

25 So yes, the language was tweaked by the trust, going

1 forward, in an effort to present contracts to the ongoing
2 staff. Individual employees, in their individual capacity,
3 would not necessarily know the reason for that. They would not
4 be able to speak to that reason. They would not be able to
5 speak to anybody else's contracts.

6 And really, Your Honor, as you have heard, it had
7 nothing to do with whatever domestic dispute may have been
8 ongoing or may have been about to occur -- I don't even know
9 the time frame -- with regard to the former employee, Ms. Fose.

10 The agreements that were in the file are the
11 agreements. There's nothing more to add. They have the
12 information. They now are doing nothing more than distracting
13 our current staff from focusing on their duties ascribed to
14 them to assist in completing the tasks that have been described
15 to them by you in your confirmation order and the trust
16 agreement.

17 Your Honor knows that the trust is trying to wrap up.
18 There is limited staff to do a lot in a very limited time
19 period that you are well aware of where we are. They do
20 deserve to have their well-earned vacation that's been planned
21 for a long time. But then they need to be able to focus on the
22 real tasks at hand, and trying to assist in some legal theories
23 that just -- are just conjured up, is not something that ever
24 was expected of them to have to do.

25 This type of state court action should not be

1 countenanced, Your Honor. We respectfully ask that you put a
2 stop to it, that you award damages. We take great issue
3 regarding the legitimacy of the trust documents that's been put
4 into speculation today, and are extremely concerned about that.

5 And one other point, Your Honor, the issue with regard
6 to the Mr. Barnes subpoena that was raised, Mr. Barnes, I
7 believe, is counsel for Ms. Fose, the former employee. The
8 trust's understanding with respect to that subpoena that's been
9 issued to Mr. McDonald in conjunction with trial is that that
10 subpoena is to elicit testimony only with regard to personal
11 relationships that existed between Mr. McDonald and Mr. Fose
12 and do not impact the trust at all.

13 But I can assure Your Honor, we will follow up again.
14 And if we determine that that is not the case, then we will be
15 back before you with regard to that specific subpoena as well.
16 So that really is a red herring with respect to today's
17 matters.

18 For today, Your Honor, we do respectfully request that
19 you enter an order enforcing your confirmation order and the
20 plan, the trust document, barring Mr. Ewing, his firm, Mr.
21 Fose, from any further attempts to commandeer the trust
22 resources by the subpoenas or otherwise.

23 We also ask that you should sanction all of them and
24 hold them jointly and severally liable for all of the damages
25 that have been incurred. We have expended a lot of time and

1 effort, going back for fifteen months, with respect to this
2 matter, and respectfully ask that you put it to an end.

3 THE COURT: All right. Thank you.

4 Mr. Ewing?

5 MR. EWING: First, Your Honor, counsel obviously
6 prepared her closing remarks before she listened to Ms.
7 Bradshaw's testimony. In about three minutes of questioning by
8 me, she admitted exactly what I thought had happened, that
9 there's only one addendum, it's only this one employee, no one
10 else signed it, there was no reason for this employee to sign
11 it, and it happened because of a private conversation between
12 her and the trustee. That proved exactly what I've been
13 talking about, okay?

14 THE COURT: So we'll put that aside, whatever that is.
15 You're aware of my Toshiba opinion and the fact that you have
16 to get leave from this Court in order for any other court,
17 whether it can be to have jurisdiction, subject-matter
18 jurisdiction over the trust or the trust employees in their
19 official capacities. And that wasn't done here. And so
20 obviously it appears to me that your subpoena is void, just as
21 I said in Toshiba.

22 Now, you've also said to me that you're willing to
23 work something out and to talk and to figure it out, and even
24 extend your trial date, which I will leave to you. But you
25 realize you can't just keep sending subpoenas now, right?

1 MR. EWING: I understand that, Your Honor. I didn't
2 do it to intentionally violate the orders of this Court. And
3 if there's any sanction that the Court is going to levy, it
4 should be on me, not anyone else. I'm the one that signed it.
5 I did not know about your order, but obviously I should have.

6 THE COURT: Okay. I'm not going to enter any sanction
7 today; I just want to put you on notice of that because of the
8 very short notice of this hearing. I don't think that that's
9 fair to anybody.

10 But what I am going to do is ask you to not issue more
11 subpoenas in the meantime, you know, and that if you need to
12 get something from the trust, this is the place you need to
13 come and seek it. And you do understand that now, right?

14 MR. EWING: I do, Your Honor.

15 THE COURT: Okay. Very good.

16 Ms. Tavenner, if you could come back to the podium.

17 MS. TAVENNER: Yes, Your Honor.

18 THE COURT: I will enter an order consistent with the
19 order I entered previously in this case in the Toshiba matter,
20 you know, on jurisdiction of the subpoenas so that the
21 subpoenas cannot be enforced against the trust or Ms. Bradshaw
22 so that we don't have that issue.

23 You know, of course, that they can come back here and
24 ask for relief.

25 MS. TAVENNER: We understand.

1 THE COURT: You do understand that? With regard to
2 the sanctions issue, I realize you have a prayer for sanctions,
3 you asked for me to issue a show cause. I am not going to have
4 that hearing today. I'm not doing that. I don't think that
5 Mr. Ewing or his firm had enough notice to be able to even
6 respond to it.

7 I am sensitive to the expense and such that the trust
8 has obviously been going through in order to resolve this
9 matter. I mean, I understand what Mr. Ewing is saying, with
10 his partner being out and unavailable to him. But I imagine
11 that you can talk with him further, and if there's a need to
12 bring this on the sanctions part of this, that you will, and
13 give appropriate notice so that everybody can be prepared and
14 be here, and then we can go through that if necessary.

15 But Mr. Ewing has said he's willing to resolve this,
16 and I know you are -- I know from your record that you are too.
17 So I hope it may be something that can be resolved, and I'll
18 leave that to the very good lawyering that would be in this
19 room right now.

20 So Ms. Bradshaw need not appear on Monday for the
21 deposition. And the trial subpoena's unenforceable. And
22 that's without prejudice to Mr. Ewing to be able to come back
23 to this Court.

24 MS. TAVENNER: Thank you, Your Honor.

25 THE COURT: Any questions?

1 MS. TAVENNER: No, Your Honor. We will tender an
2 appropriate order.

3 THE COURT: Okay. Thank you.

4 Mr. Ewing, do you have any questions?

5 MR. EWING: No.

6 THE COURT: Okay. Thank you, sir.

7 All right. Thank you for your presentation this
8 morning, and I'll look forward to getting that order from you.

9 MS. TAVENNER: Thank you, Your Honor.

10 THE CLERK: All rise. Court's now adjourned.

11 (Whereupon these proceedings were concluded at 10:50 AM)

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I N D E X

VOIR

WITNESSES: DIRECT CROSS REDIRECT RECROSS DIRE

FOR THE DEBTOR:

Michael Scott Ewing 15 37 39

Katie Bradshaw 41 50

EXHIBITS: DESCRIPTION MARK ADMIT

FOR THE DEBTORS:

1 Subpoena duces tecum 17

2 Email from Ms. Beran to Ms.
Barton 18

3 Circuit City/Toshiba court
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4 March 22nd, 2019 subpoena
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5 March 13th, 2019 email from
Tavenner & Beran to Mollie
Barton 21

6 Notice to take deposition 26

7 Subpoena for witness for trial
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8 Email dated 12/11/19, 5:38 p.m.,
from Mr. Ewing to Ms. Beran 30

9 Email response, dated 12/11/19,
5:55 p.m., from Ms. Beran to
Mr. Ewing 30

10 Email dated 12/11/19, 6:16 p.m.,
from Mr. Ewing to Ms. Beran 31

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11	Email dated 12/11/19 at 7:06 p.m. from Ms. Beran to Mr. Ewing		31
12	Email dated 12/11/19, 9:40 p.m., from Mr. Ewing to Ms. Beran		34
13	Subpoena of Mr. McDonald		35

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C E R T I F I C A T I O N

I, Sharona Shapiro, the court-approved transcriber, do
hereby certify the foregoing is a true and correct transcript
from the official electronic sound recording of the proceedings
in the above-entitled matter.

Sharona Shapiro

December 16, 2019

SHARONA SHAPIRO

DATE

AAERT Certified Electronic Transcriber CET-492

December 12, 2019

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